

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: DELONG CONSTRUCTION, INC. et al. Washington County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2008-AQ- 29 NO. 2008-SW- 23
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TO: DeLong Construction, Inc.
Dana DeLong-Patterson, Owner
1320 N. 8th Ave.
Washington, Iowa 52353

DeLong Construction, Inc.
Deran DeLong, General Manager
1320 N. 8th Ave.
Washington, Iowa 52353

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and DeLong Construction, Inc.; DeLong Equipment Company, Inc.; DeLong-Keith Construction, Inc.; and DeLong Recycling, all of Washington, Iowa, for the purpose of resolving solid waste and air quality violations which have occurred at 1320 N. 8th Avenue, in Section 8, T-75-N, R-7-W, Washington Township, Washington County, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Mark Heiderscheid, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison
Washington, IA 52353
Phone: (319) 653-2135

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any

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order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Dana DeLong-Patterson and Dcran DeLong own and operate the following businesses in Washington, Iowa: DeLong Construction, Inc.; DeLong Equipment Company, Inc.; DeLong-Keith Construction, Inc.; and DeLong Recycling (collectively referred to hereinafter as DeLong). The home address for all of these businesses is 1320 N. 8th Avenue, Washington, Iowa 52353.

2. On December 4, 2007, Tom Wuehr, DNR Air Quality Bureau, notified DNR Field Office 6 that he observed burning at the DeLong business or businesses located at 1320 N. 8th Avenue in Washington, Iowa. Mark Heiderschit, an environmental specialist for DNR FO 6, investigated and observed wood and old plywood boards being burned in an old culvert turned on its side. Photographs were taken at the site to document observations.

3. On December 5, 2008, 2007, Field Office 6 issued a Notice of Violation letter to DeLong Equipment Company, Inc. for open burning and improper waste disposal. The letter also informed DeLong that the matter was being referred for further enforcement action.

PAST ENFORCEMENT HISTORY

4. The DeLong's have received a prior Notice of Violation letter for open burning. On April 18, 2000, DNR field staff observed the illegal open burning of an agricultural building and waste generated from an Iowa Department of Transportation project along Highway 92 in Washington County. The pile of agricultural building debris was removed from its original location and burned in the construction clearing pile within ¼ mile of the Washington John Deere Dealership, in violation of the open burning rules. DeLong-Keith Construction, Inc., was the lead contractor for this project.

5. On May 1, 2000, DeLong-Keith Construction, Inc. was issued a Notice of Violation letter citing the open burning violations. Copies of the open burning rules were given to DeLong representatives at the site. The letter also stated that future violations of open burning rules could be referred for further enforcement action.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

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2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of trade wastes is specifically prohibited. Mr. Heiderscheid observed wood and old plywood boards being burned. The above facts demonstrate violations of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapter 100.

4. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. DeLong disposed of trade waste by burning rather than recycling or disposing the waste at a sanitary landfill. The above facts demonstrate a violation of this provision of this provision.

V. ORDER

THEREFORE, the DNR orders and DeLong agrees to do the following:

1. Pay a penalty of \$2,000.00 (two thousand dollars) within 30 days of the date from which the Director signs this administrative consent order; and
2. Immediately cease any and all open burning of waste at this site or any other site in the State of Iowa.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$2,000.00 is assessed. The penalty must be paid within 30 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the

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most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$2,000.00. The administrative penalty is determined as follows:

Economic Benefit – DeLong saved time and money by not properly disposing of the waste at a permitted facility. Based on what was being burned it appears that the economic benefit was minimal. Therefore, no amount is assessed for this factor.

Gravity – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and environment. The open burning of trade waste is specifically prohibited. The violation threatens the integrity of the regulatory program because compliance with the open burning regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. This matter involved the improper disposal and burning of trade waste within a quarter mile of inhabited buildings. Therefore, \$1,000.00 is assessed for this factor.

Culpability – DeLong has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Due to a previous complaint investigation, DeLong was fully aware of the rules regarding proper waste disposal. Therefore, \$1,000.00 is assessed for this factor.

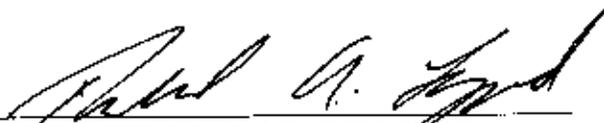
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of DeLong. For that reason DeLong waives its rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

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RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 12 day of
Sept., 2008.


AUTHORIZED AGENT
DeLong Construction, Inc.; DeLong Equipment Company, Inc.;
DeLong-Keith Construction, Inc.; and DeLong Recycling

Dated this 8th day of
September, 2008.

Washington County Air Quality file; Anne Preziosi; Field Office 6; VI.C and VII.C.1.